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Libel and Slander by Radio

By Hon. Stephen B. Davis, Formerly Associate Justice of the Supreme Court of New Mexico; Solicitor of the Department of Commerce; Author of the Law of Radio Communication.*

IN MANY states, the distinction between libel and slander is fixed by statutory definition, especially as to criminal liability. Even under such statutes, the proper classification of matter transmitted by radio is not always easy of determination.[1]

While the cases holding that reading a libelous letter constitutes the publication of a libel are few and comparatively old, there seems to be nothing later, or to the contrary. As precedents they stand as the law on the subject. If the courts follow them, the broadcasting of defamatory matter which has been put in writing will be held to be libel, rather than slander, with all the more serious consequences involved in that wrong.

That these cases will be universally followed is, however, not certain. On principle, the facts seem distinguishable. In either libel or slander the harm to the defamed person is in the effect which the statement has upon the minds of those who hear or read it. The law has laid down the arbitrary rule, which may not be true in fact, that this effect is stronger if the matter is written than if merely spoken, based partly upon the form, which is permanent in one case and momentary in the other, and partly perhaps on the idea that man believes what he reads more readily than what he hears. In all the cases cited of oral

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[1] The Washington statute, for instance, may be construed as declaring all radio defamation to be libel rather than slander. It provides (Rem. & Bal. Code, §§ 2424, 2426): "Every malicious publication by writing, printing, picture, effigy, sign, or otherwise than by mere speech, which shall tend . . . to injure any person, corporation, or association of persons in his or their business or occupation, shall be a libel. . . . Any method by which matter charged as libelous may be communicated to another shall be deemed a publication thereof."

reading of letters, the hearer was advised that what was being repeated to him was in written form. He heard the defamatory statement and knew that it had been made in writing. The effect upon his mind was precisely the same as though he read it himself. The courts, therefore, had no difficulty in determining that there was an actual communication or publication of the writing itself.

In broadcasting, however, the situation may be precisely the opposite. If the speaker merely reads from manuscript which he himself has prepared, or from a book or written matter, irrespective of authorship, making no statement that his matter is in permanent form, or reference from which that fact may be inferred, he is merely using written matter as a guide to oral statement, in lieu of memory. While he gives publicity to statements identical with those in the writing, it is stretching language to say that he has published the writing itself. Whether read or spoken extemporaneously, the operation and effect are the same. The audience receives precisely the same impression in each case. The manuscript is not itself circulated. It may be in more or less permanent form, but it is not delivered to the listeners, or seen by them, nor intended to be, nor is its existence known to them. It would seem that no importance whatever should be attached to it. Common sense would dictate that the words transmitted by radio under such circumstances should be classed as slander, not libel, and it may well be that the courts will consider that the former decisions are inapplicable to this situation, and will decline to follow them. Many of the rules of the law of libel are illogical and arbitrary. No necessity exists to carry confusion one step further to the demoralization of the latest method of thought transmission.

Joint Liability of Speaker and Broadcaster.

In the usual radio transmission there are two parties, the speaker and the broadcaster. If the matter transmitted be defamatory, two must co-operate to create the harm. No other situation parallels it. The utterance of the speaker does not leave the studio until transmitted by the operations of the station owner. They must act in concert to complete the publication. It becomes necessary to consider their respective liabilities.

The general rule as to defamation is that all persons are liable in law who are liable in fact.[2] It is said that if two or more persons utter a slander at the same time, each gives rise to separate proceedings, slander being an individual act in which there can be no joint commission. But if the utterance is single, anyone who instigated its speaking or by conspiracy caused it to be uttered is liable,[3] as are all who assist in the publication,[4] and all aiders and abetters.[5] All who co-operate in creating and publishing it, the author and the one who gives it circulation, are responsible for it as joint tort-feasors.[6]

Liability of Speaker.

The one who utters the defamation before the microphone is, of course, directly liable for it. He may not escape by asserting that he spoke in the privacy of a studio and would not have been heard but for the act of the broadcaster who gave his utterance publicity. His purpose was

[2] Cooley, Torts, 3d ed. p. 209; Smith Bros. & Co. v. Agee, 178 Ala. 627, 59 So. 647, Ann. Cas. 1915B, 129.

[3] Bebout v. Pense, 35 S. D. 14, 150 N. W. 289; Page v. Citizens Bkg. Co. 111 Ga. 73, 78 Am. St. Rep. 153, 36 S. E. 418, 51 L.R.A. 463.

[4] 1 Street, Foundations of Legal Liability, p. 298.

[5] Tucker v. Eatough, 186 N. C. 505, 120 S. E. 57.

[6] Miller v. Butler, 6 Cush. 71, 52 Am. Dec. 768.

to reach an audience and he is held to the natural consequence of his acts.[7] He is in the same position as the author of a libelous article who obtains its publication in a newspaper or magazine. He is the moving cause and is primarily liable.

Liability of Broadcaster.

The newspaper cases as to libel illustrate the individual liability of the publisher. The proprietor is held in law for all defamatory matter. Also, the managing editor,[8] the printer, and the publisher are liable to be sued, either separately or together.[9] The liability is absolute. If the publication is libelous per se, the motive is immaterial.[10] The publisher may have made an honest mistake; yet he remains liable.[11] The law looks to the tendency and consequences of the publication, and not to the intention of the publisher.[12] He may be ignorant of the author's intention to libel, or of the libelous character of the published matter or of the matter itself; yet he remains responsible in law.[13] Justice Holmes[14] states the rule as follows: "If the publication was libelous, the defendant took the risk; as was said of such matters by Lord Mansfield: 'Whatever a man publishes, he publishes at his peril.' . . . The reason is plain. A libel is harmful on its face. If a man sees fit to publish manifestly hurtful statements concerning an individual, . . . the usual principles of tort will make him liable, if the statements are false. . . ."

Stephen B. Davis

Application of Absolute Rule to Broadcasters.

If this rule is to be applied to the owner of a broadcasting station, his liability is absolute. Having chosen to broadcast, he must assume the consequences. Yet there are differences between his situation and that of the newspaper proprietor, which make the absolute rule harsh and unfair when applied to him. For, while the newspaper owner by the exercise of due care may prevent his publication from being used as an agency for libel, the broadcaster in many cases cannot. Matter for newspaper publication is necessarily prepared in advance. The editors scan it for news value, consider its propriety, and determine whether or not it shall be accepted. There are time and opportunity for consideration and determination, and the matter itself is plainly presented. The power to eliminate defamatory statements is in the owner's hands, or under the control of employees for whom he is responsible. Compelling him to publish at his own risk is, therefore, not unjust or unfair.

The broadcaster, on the other hand, has no such opportunity of complete inspection and protection.

[7] Hedgepeth v. Coleman, 183 N. C. 309, 111 S. E. 517, 24 A.L.R. 232.

[8] Newell, Libel & Slander, 3d ed. p. 461.

[9] Odgers, Libel & Slander, 4th ed. p. 164.

[10] 25 Cyc. 371.

[11] Note to Laudati v. Stea, 26 A.L.R. 457.

[12] Hatfield v. Gazette Printing Co. 103 Kan. 513, 175 Pac. 382, 3 A.L.R. 1276.

[13] Note to Corrigan v. Bobbs-Merrill Co. 10 A.L.R. 672.

[14] Peck v. Tribune Co. 214 U. S. 185, 53 L. ed. 960, 29 Sup. Ct. Rep. 554, 16 Ann. Cas. 1075.

There is no interval between the speaking of the word into the microphone and its transmission to the listening public. The station owner has no chance to consider whether he will publish it, for speech and transmission are simultaneous. He may use the highest discretion in the selection of speakers of spotless reputation for fair speaking, and his trust may be misplaced. He may require the submission of manuscript in advance, find it free from calumny, and so pass it, and the speaker may depart from it. He may have his monitor listen to each word spoken through the microphone; yet the defamation may come so suddenly that its escape cannot be prevented. To impose absolute liability under such circumstances is to penalize in the absence of blameworthiness—not the usual principle in the law of torts.

Application of Rules to Broadcasting.

The station is not usually a common carrier or a public utility, nor under any obligation to transmit. Unlike the telegraph company, it does exercise the power of censorship. Like the newspaper, it may publish or not, at its will.[15] Precedent, therefore, calls for the imposition of a strict liability, and the general rule that the voluntary publisher assumes the risk may be applied. Yet the distinct variances in the situations, especially in the means of protection, may lead the courts to apply the more reasonable rule of due care. As has been said, it is not humanly possible for the station manager to prevent all calumny, for the defamatory statement may go out before he can realize its nature and cut off the transmission. The law should not require the impossible, and force of circumstances may often demand the adoption of the due-care doctrine.

Broadcaster's Liability for Utterances of Self or Agents.

If the broadcaster himself utters the defamatory matter before the microphone, there is no problem. He is liable for the same reasons and to the same extent as any other defamer who chooses a different means of publicity. If he hires someone else to do so, his liability is the same, for the law imputes the words of the speaker to him and makes them his own. If the person speaking is his employee, liability would be governed by the usual rules of law, under which a principal is responsible for wilful or malicious defamation by his agent or employee acting within the scope of his authority.[16] The station owner may be innocent in fact. He may have no notice of the speaker's intent, and the utterance may be made before it is possible for him to break the connection from the microphone to the antenna. But under the general rules of principal and agent or master and servant, the possibility of preventing harm is of no importance. If the speaker is in law the agent or employee of the broadcaster, the latter is liable for his defamatory utterances, regardless of care or lack of it, just as for his own utterances. Obviously, however, there will be very few instances in which either express or implied authority has been given an agent or employee to engage in slander.

Liability in Absence of Agency.

A common practice in broadcasting to-day is to invite talented persons to appear in the studio and speak or sing through the microphone. They are not paid, nor do they pay the owner, each doing his

[15] Even the provision of § 18 of the Radio Act of 1927 does not impair its final liberty in this respect, for although it is required to permit its use to all qualified candidates for a given public office if it does so for any, it is still free to refuse all, so that the ultimate choice is its own.

[16] Newell, Slander & Libel, 3d ed. p. 459.

part for reasons satisfactory to him, and having no relation or obligation to the other. The speaker is not an employee and the true relationship of master and servant does not exist. Some supervision may be exercised by the broadcaster, who may censor the manuscript or score, and fix and limit time. This control and direction are, however, more superficial than real, and the two parties, the speaker and the broadcaster, occupy the character of volunteers in a joint undertaking. If under these circumstances the speaker defames another, there would be no agency, and no preconceived design or conspiracy.

To impose a rule of absolute liability under such circumstances is somewhat shocking. It might make the station owner subject to the payment of damages for an injury which he could not prevent and which involves neither wrongdoing nor negligence on his part. It is an easy answer to say that he need not broadcast, and if he does he must suffer all the consequences. But that is not the rule applied to the conduct of other business no more legitimate, in which, under the law of tort, liability depends upon fault. Justice seems to require the application of the due-care doctrine, a declaration that if the broadcaster has exercised reasonable care under all the circumstances, has done everything possible to guard against the injury, the responsibility will not be cast upon him, but will fall solely upon the speaker.

Whether or not due care has been exercised would necessarily be determined only by the facts and circumstances of each case. The character of the speaker, whether or not he was required to submit his prepared remarks in advance, the maintenance of a monitor instructed to cut the transmission of defamatory matter, the opportunity for prevention, and the grounds for anticipation or the lack of them, are features which might reasonably be taken into consideration in determining whether proper care had been exercised in the particular case.

The decision which must be made by the courts when forced to the necessity of choosing between the two standards, one calling for reasonable care and the other imposing absolute liability, will depend upon whether they are controlled by past adjudications, or abandon precedent and apply rules of reason to changing conditions. He would be a bold prophet who would now attempt to predict the outcome.

Another class of cases may arise. An independent party may rent or lease, for a long or short period, the entire facilities of the broadcasting station. He chooses and arranges his own program, though the broadcaster continues to operate the electrical devices. The talent appearing before the microphone is procured and paid for by the outsider. In the event of defamatory transmission under these circumstances, the latter is clearly liable, but is the broadcaster also responsible? This is the converse of the situation first illustrated. Here the third party is the principal and the broadcaster is the agent. Without doubt the broadcaster is liable if he knowingly participates in the transmission of such matter. But if he has no reason to anticipate and cannot prevent the defamation, the general rule of absolute liability seems too harsh, and the doctrine of reasonable care again seems the fair one.

Public addresses and varied forms of entertainment are broadcast from places outside of the studio. The pick-up apparatus is set at the place where the matter originates and transmits it by wire to the studio. In such cases, the broadcaster has no opportunity to censor in advance, and he makes no pretense of doing so. The proceedings are wholly within the control and discretion of others. If a speech, it may or may not be in writing. The speaker alone determines what he will say. The spoken matter in all instances is beyond the control of the broadcaster.

Photo by Underwood & Underwood

Air Law*

—By WILLIAM P. MacCRACKEN, JR.

IT WOULD be helpful if I mention some of the uses of the upper air and touch slightly upon their development. By use of the upper air I mean such uses as are made of it independent of any fixed contact with the earth's surface. This excludes telegraph wires, overhanging eaves, branches of trees, and similar objects which are dependent upon a contact with the ground for their support. This discussion will deal with the use of the air independent of a supporting contact with the earth's surface.

It was something over a century ago that we first had an example of such a use, on the occasion of the first free balloon ascensions made in France. This method of aerial navigation was first demonstrated in this country shortly after George Washington was inaugurated as the first President of the United States, and was witnessed by him just outside of Philadelphia. The free balloon was used for military observation during the Civil War, and since then has been used primarily for sport and as attractions in connection with amusement enterprises. They have never been developed as a commercial transportation medium.

In the latter part of the nineteenth century Marconi demonstrated the possibility of transmitting code messages through the air space without the use of wires. In the brief space of time which has elapsed since this invention, the art has developed to the point where broadcasting is heard all over this country, and even between the continents of Europe and America, and between America and Australia. You are all familiar with the active career of the late Theodore Roosevelt as a speaker. It has been conservatively estimated that more persons heard the voice of President Coolidge at the time he delivered his inaugural address than heard the voice of Theodore Roosevelt in his entire lifetime.

Not only are they transmitting the voice through the air, but also photographs, and it was my privilege a few months ago to go through the laboratory where the apparatus is being developed which will transmit through the air space, not only moving picture performances, but actual events which take place within the range of the projecting apparatus. The receiving set used in connection with this invention is very similar to the ordinary receiving set with which practically all of you are fa-

* Address delivered before the Idaho State Bar Association in July, 1926. Mr. MacCracken is now Assistant Secretary of Commerce for Aeronautics.

miliar, except that instead of having ear phones, or a loud speaker, the receiving set is attached to a device which reproduces the picture or event on the silver screen. There are those who predict that not only will the upper air spaces be used for the transmission of photographs, messages, programs, moving pictures, and actual happenings, but also for the transmission of power and heat. Such developments are of the utmost importance, not only commercially, but politically. They are bound to bring the peoples of the world closer together and result in better understanding among them.

I have spoken largely about the use of the air as a means of communication. Let me call your attention to some things which have been accomplished in the field of aerial navigation. The Wright brothers made their first flights in a heavier-than-air machine less than twenty-five years ago. Prior to that time Count Zeppelin of Germany had developed his airship, which was capable of carrying goods and passengers over a fixed course on a reasonably satisfactory schedule. However, both the Zeppelin and the air plane were regarded primarily as auxiliary equipment for the use of military forces until after the World War. During the four years of that war both the Zeppelin and the air plane underwent remarkable development. Their use, being wholly military, resulted in the perfection of those characteristics which are primarily important in time of war, such as speed, maneuverability, and utility for the various special purposes desired in armed conflict, little attention being paid to the commercial features, such as safety, comfort of passengers, capacity for carrying a commercial cargo, and cost of operation.

These commercial features, however, are now receiving attention. Already the safety feature has been raised from one fatality for every 138,600 miles flown by the United States Air Mail during the three-year period 1918 to 1921, to one fatality for every 1,250,000 miles flown during the year beginning July 1, 1925, and ending June 30, 1926.

The original Wright plane was barely able to carry the pilot and a very meager supply of gasolene. Air planes have been constructed with a capacity of carrying from 2 to 3 tons of cargo, as well as their fuel supply. These are rather exceptional, but there are many air planes in everyday use capable of carrying from one to two thousand pounds of cargo.

There is a popular conception that American aviation is far behind Europe. Aircraft operators in this country are flying more miles, carrying more pounds, and earning more revenue than all the lines of Europe together. There is not another line in the world that is doing what the United States Air Mail Service has been doing for the past two years between Chicago, Illinois, and Rawlins, Wyoming, namely, flying at night on regular schedules. A year ago this service was extended to provide for night operation between Chicago and New York. In addition to our transcontinental airway extending from New York to San Francisco, there are in operation ten feeder lines and three independent lines operated by private contractors. It is less than a year from the time the Post office Department first advertised for contract air mail bids. These operators commenced carrying mail only. Already two of them are providing a regular passenger service, and it is expected that others will do so in the very near future. Thus, you can see clearly that the upper air space is coming to play an important part in the commercial life of the present and succeeding generations.

In taking up the legal problems which have been presented in connection with these scientific accomplishments, they naturally divide themselves into three parts: First, the right to use the air; second, lia-

bility for damage occasioned by such use; and third, government regulation of its use.

Long before any use was made of the upper air space similar to what has been described, jurists have given expression to the old maxim, "cujus est solum, ejus est usque et cœlum," which, freely translated, means, he who owns the ground owns to the depths and to the skies. No one seems to know just where this maxim originated, and there have never been any cases which decided just what title each landowner had to that particular spot known as the earth's center. It is doubtful if any use has been made of the ground in excess of 2 miles below the earth's surface. As far as the air is concerned, nobody has built over a thousand feet above the earth's surface. This maxim probably originated when one landowner asserted his right to trim off the branches of his neighbor's trees when they hung over his property. There is some reason to believe that this pronouncement was made by a court, although it may have originated with a text-writer. At any rate, it has not been applied to a situation where one is flying over the land of another without interfering with the use of the surface and the air space immediately above the surface.

There are three cases in this country in which that question was raised: The first was a Pennsylvania case in which an aviator was arrested for trespass under a statute, passed some fifty years ago, which provided that, by posting one's land with notices warning trespassers to keep off, the owner had a right to file a complaint and receive one half of the fine without proving any damage to the land. The complaint was sworn out by a landowner who had posted his land as required by statute. In the lower court the defendant was fined, and on appeal the judgment was reversed. The opinion held, first, that no trespass had been committed, and second, that, if it had, this particular statute was not applicable, inasmuch as it was intended that the defendant should have warning not to come on the complainant's land, and that in this case the defendant could not possibly have read the notice from the air.

Another case arose in Minnesota, involving solely the question of aerial trespass under the common law. In this case the trial court decided against the landowner, holding that the English maxim which was relied upon by the plaintiff had never been applied to this particular situation, and that it was entirely contrary to the spirit of the common law to handicap this useful means of transportation by requiring aviators to secure a right of way before flying over land of a private individual.

A similar case was decided last week in Lincoln, Nebraska, in which the court held against the contention of the landowner. In this case the plaintiff claimed special damages by reason of the air plane disturbing his poultry and preventing their laying.

In view of the fact that millions of miles have been flown in this country during the past twenty years, without any landowner successfully contesting the right of an aviator to fly over his land, we may well assume that this right has been definitely established by common usage. Of course, it is possible for an aviator to make himself a public nuisance. If he insists on flying low over your premises, diving at your cattle so as to frighten them, endangering life and property on the ground, there can be no question but that the common law would afford a remedy.

The Conference of Commissioners on Uniform State Laws, in drafting the Uniform Aviation Act, declared in favor of the so-called easement of flight. The Federal Congress has declared, in the Air Commerce Act of 1926, that air space above the minimum safe altitude of flight as prescribed by the Secretary of Commerce shall constitute navigable air space, and shall be subject to a pub-

lic right of freedom of air navigation in interstate and foreign commerce, when conducted in conformity with the requirements of the act.

In all probability some day a case will go to the Supreme Court of the United States involving this question, but it would seem, in the light of this legislative enactment, the reasoning of the courts in the cases referred to, and the fact that countless numbers of landowners have acquiesced without objection, their holding would be in favor of the public right of air navigation.

Under the original Radio Act passed by Congress the Secretary of Commerce was given power to license broadcasting stations. For several years this power was construed to give the Secretary the right to refuse a license if in his opinion it would substantially interfere with another station already licensed. Several years ago, however, the Federal Court held that the Secretary had no such discretion and that upon a proper application being filed the Secretary could be compelled to issue a license to any applicant, and that mandamus could be invoked in the event of his refusal to do so. This did not result in great confusion, however, because the broadcasters permitted the Secretary to assign the wave lengths and apportion the time when they might be used. Recently, however, one of the broadcasters became dissatisfied with the time allowed and the wave length assigned and appropriated another wave length, disregarding entirely the time allotment. The Secretary brought a criminal action against the broadcaster and the matter was heard in a Federal court on an agreed statement of facts. Judge Wilkerson in his opinion held that the Secretary was without power to assign wave lengths or to divide time and that once a broadcasting station obtained a license they might use it in any way they saw fit. If this decision stands, anybody who wants to may apply for a license and if refused can compel the issuance of one by mandamus, and once the license is issued make use of it in any way he desires.

There were two bills before Congress when they adjourned last month, one of which provided that the Secretary of Commerce should have the right to assign wave lengths to broadcasting stations, and that as long as the station complied with the regulations of the Department they would be permitted to use that particular wave length. In other words, it established what is known as a proprietary right in wave lengths.

The other bill provided that wave lengths should be assigned for only a three-year period and could not be re-assigned to the same party if there were other pending applications which could not be granted because of the insufficiency of available wave lengths. If enacted into law this would mean that once a broadcasting station was set up the probabilities would be that after three years of use it would have to be dismantled or transferred to someone else who secured the license. This would seriously retard the investment in broadcasting stations and would curtail expenditures on the programs because of the relatively short period of time that the station would be in existence. Any legislation on this subject is bound to present novel questions which in all probability will have to be passed upon by the Supreme Court of the United States before they are finally determined.

This gives you a general view of the situation as far as radio regulation is concerned.

Turning again to aeronautics, the last Congress passed what is known as the Air Commerce Act of 1926. This act authorizes the Secretary of Commerce to inspect and license aircraft and to examine and license pilots and mechanics. It requires that all American aircraft and pilots engaged in interstate or foreign commerce as defined by the act must be so licensed. It also authorizes the

Secretary of Commerce to promulgate air traffic regulations which shall be binding upon all civil and military aircraft of the United States. When this act is put into effect there will be no occasion for state regulation of aeronautics except possibly requiring the licensing of planes and pilots who are not licensed by a Federal authority. The act authorizes the Secretary of Commerce to establish airways, provide air navigation facilities and in general to foster and permit air commerce and the aircraft industry. It expressly prohibits the granting of an exclusive right to the use of any airway or air navigation facility. The air lanes and Federal aids are to be free to every citizen who wants to use them.

Time will not permit discussion of the question of the liability of the aircraft operator for damages which may be occasioned either to passengers, cargo, employees or other persons. Some interesting questions have already arisen and more will undoubtedly be raised.

Trespass by Invasion of the Air by Aircraft

THIS question is the subject of annotation in 42 A.L.R. 945. From this note it appears that the orthodox common-law rule is that any intrusion into the air space above the land of another amounts to a trespass. As said in Markham v. Brown, 37 Ga. 277, 92 Am. Dec. 73: "Where two persons claim to have actual possession of the same land, he is deemed in possession who has the legal title, and the other is a trespasser. The owner of realty, having title downwards and upwards indefinitely, an unlawful interference with his rights, below or above the surface, alike gives him a right of action."

Any limitation upon the right of a landowner to maintain an action of trespass for the invasion of the air above his land is essentially an attack upon the maxim, "cujus est solum, ejus est usque ad cœlum." The phrase "usque ad cœlum" has not been free from criticism. It has been referred to as "the production of some black-letter lawyer," "a glittering generality," and even characterized as "another fanciful phrase."

The question of an aeronaut's liability in trespass for flying over the land of another seems never to have been passed upon in any reported case in America. However, in the unreported case of Com. v. Nevin, the court of quarter sessions of Jefferson county, Pennsylvania, in April, 1922, according to 71 Pa. L. Rev. 88, held that, under a penal statute making a trespass upon lands which have been posted with "No Trespass" signs an offense against the commonwealth, an aeroplane flight over posted lands is not an unlawful trespass punishable under the act.

A Paris court decided that an owner of land has no such interest in the air above the surface thereof as to be legally entitled to prevent an aviator from making a flight over his land, cited in 53 Am. L. Rev. 732. And a decision of a Paris court is thus reported in 18 Va. L. Rev. 383: "The case in question involved the right of a landowner to say whether an aeronaut might fly over his land.

A number of landed proprietors in the vicinity of the Buc aerodrome brought suit against Maurice Farman, alleging that they had been materially damaged by the frequent flying over their lands, horses being frightened and people annoyed by the noise of the engines, not to speak of damage done to fields in the landing of machines. The attorney for Farman contended that ownership of the land did not carry with it the right to the air above; else a landlord might claim the very stars in the sky. He admitted that under the French law everything above and below the surface belongs to a landlord, but he did not admit that this construction included air. The court awarded $100 damages to one farmer, whose land had been damaged in a landing, but declined to pass on the larger question of prohibiting future flights, on the ground that aerial navigation had not yet been regulated by the law courts."

However, the Civil Tribunal of the Seine, in Brinquant Mange v. Societe Farman, cited in 53 Am. L. Rev. 732, held that an aeroplane flight over land from a near-by aerodrome amounted to an actionable trespass, where the aeroplane took a course across the land at an altitude of from 5 to 15 meters, and that, as a consequence thereof, animals and game were frightened, and crowds were attracted on the land, to the damage of the crops and the general inconvenience of the landowner.

And the First Chamber of the Tribunal Civil of Paris, in the case of Huertebrise v. Ensault Pelterie Fannan, cited in 53 Am. L. Rev. 732, rendered a judgment of 2,500 francs in favor of the owner of a farm over which flights had been conducted at an insufficient altitude by the owner of a near-by aerodrome; the court saying that the principle "must restrict itself reasonably to the advantage of the proprietor, according to the height in the air usable by him, either in the way of buildings or accessories of buildings, such as architects and engineers can conceive and realize, or from the standpoint of cultivated land generally. As to that which is above this height—estimated and fixed according to knowledge or experience deduced from usage, common sense, scientific rules, and the special circumstances of each case—the freedom of the air is complete, and the circulation aerienne is, in the present state of the law, free from all restraint, and should not call forth new claims on the part of the proprietors of lands over which flights take place."

The decision of a moot court, composed of lawyers sitting as the appellate division of the state of New York, of Rochester, New York (1912), reported in 19 Case and Comment, 681, holding that at common law the passing of an aeroplane over land at a height of 100 feet constitutes a trespass to the land, on the theory that ownership of land extends upwards to infinity, may be of interest.

LAW OBSERVANCE

It has long been my feeling that we have had too much talk about law enforcement and too little thought about law observance. Law enforcement is a duty of the State delegated to certain officials. Law observance is a duty of the individual and can not be delegated. If we had real law observance we would have no problem of law enforcement. . . . The law of the atom is the law of the mass. As does the individual, so does the Nation; our mind is the Nation's mind; our heart the Nation's heart; our strength the Nation's strength; our courage the ..ation's courage; our soul the Nation's soul. To everyone of us there comes a challenge. Are we equal to the responsibility?

—Ernest H. Van Fossan.

Precedent is a fruit of reason ripened by time.—*Baldwin.*

Banks — *cashier as employee entitled to lien for wages.* The cashier and assistant cashier of an insolvent bank are held in the Tennessee case of State ex rel. McConnell v. People's Bank & Trust Co., 296 S. W. 12, not to be within the operation of a statute giving all employees and laborers of any corporation a preferential lien for their salaries upon corporate assets in the hands of a receiver.

Character of service contemplated by statutes giving a lien or preference, in event of insolvency, to servants, employees, laborers, etc., is treated in the annotation which accompanies this case in 54 A.L.R. 564.

Carriers — *freight company.* One engaged in switching and delivering cars between freight terminals and private sidings is held to be a common carrier in the Massachusetts case of Batchelder & S. Co. v. Union Freight R. Co., 156 N. E. 698, annotated in 54 A.L.R. 616.

Chattel mortgage — *on apple crop.* An apple crop is held to be personal property, within Comp. Stat. § 5326, not real property as defined by § 9456, and subject to chattel mortgage, in absence of statute in the Idaho case of Twin Falls Bank & T. Co. v. Weinberg, 257 Pac. 31; such crop being "fructus industriales," in that it requires annual pruning, spraying, and cultivation, as differentiated from "fructus naturales," or crops produced by powers of nature alone.

Chattel mortgage on fruit crops growing or to be grown is the subject of the annotation which accompanies this case in 54 A.L.R. 1527.

Constitutional law — *pension — vested right in.* As against the state or its political subdivisions, it is held in People ex rel. Donovan v. Retirement Board Policemen's Annuity & Ben. Fund, 326 Ill. 579, 158 N. E. 220, there is no vested right in a pension accruing in the future from month to month.

Annotation on vested right of pensioner to pension accompanies this case in 54 A.L.R. 940.

Constitutional law — *police power — regulation of sale of drugs.* The state, under its police power, is held entitled in the Tennessee case of State v. Foutch, 295 S. W. 469, to regulate the sale of drugs, poisons, and medicines, in the interest of the public health.

The question of the constitutionality of a statute regulating the sale of poisons, drugs, or medicines is consid-

ered in the annotation appended to this case in 54 A.L.R. 725.

Contracts — *compensation — intent.* Even though services are rendered or acts done on request, there is held to be no liability in the Minnesota case of Carlson v. Krantz, 214 N. W. 928, where the circumstances repel the inference that compensation was intended. So, when services are performed, acts done, or promises made solely for charitable purposes, and without the intention of assuming contractual obligation, the law will not imply such obligation.

Circumstances other than relationship of parties which repel inference of an agreement to pay for work performed at one's request, or with his acquiescence, are treated in the annotation appended to this case in 54 A.L.R. 545.

Cotenancy — *when one may acquire adverse interest.* If the interests of cotenants accrue at different times under different instruments, and neither has superior means of information respecting the state of the title, either, unless he employs his cotenancy to secure an advantage, it is held in Hodgson v. Federal Oil & Development Co., 274 U. S. 15, 71 L. ed. 901, 47 Sup. Ct. Rep. 502, may acquire and assert a superior outstanding title, especially where there is no joint possession.

Annotation on the right of cotenant to acquire and assert adverse title or interest as against other cotenants is appended to this case in 54 A.L.R. 869.

Covenants — *restriction of business enterprises — enforcement.* Restrictive covenants against business enterprises, in deeds of property in a residential section, it is held in Starkey v. Gardner, 194 N. C. 74, 138 S. E. 408, will not be rigidly enforced in equity where there has been a fundamental change in the character of the property due to municipal expansion, the spread of industry, or other causes.

Change of neighborhood in restricted district as affecting enforcement of restrictive covenant is treated in the annotation which follows this case in 54 A.L.R. 806.

Covenants — *restrictive — garage as part of dwelling.* A covenant in a deed restricting the use of the property to a single dwelling house, together with any necessary outbuildings, is held in McGreggor v. Peabody, 240 Mich. 425, 215 N. W. 241, not to prevent the construction of a garage for family use as part of the dwelling house, notwithstanding the fact that at the time the deed was executed the custom was to build garages on the rear of the residence lots.

The annotation which accompanies this case in 54 A.L.R. 657, treats of garage, or filling station, as breach of restrictive covenant.

Damages — *death — medical services.* Under a statute permitting the widow of one killed by another's negligence to maintain an action for damages for the death thus occasioned, it is held in Regan v. Davis, 290 Pa. 167, 138 Atl. 751, that she cannot recover for medical services to decedent, where the bill was not incurred or paid by her.

Medical expenses as item of damages in action for personal injury resulting in death is the subject of the annotation which accompanies this case in 54 A.L.R. 1073.

Damages — *destruction of fence — cost of replacement.* The damage recoverable by one whose stone fence has been wrongfully torn down by another, and replaced by a wire fence, is held to be not the difference in the value of the two fences as an inclosure, but the present cost of constructing a stone fence similar to the one destroyed, less the amount of the depreciation which it had suffered

from age and use in the Kentucky case of Reed v. Mercer County Fiscal Court, 220 Ky. 646, 295 S. W. 995, which is followed in 54 A.L.R. 1275, by annotation on measure of damages for destruction or removal of fence.

Damages — *injury to credit.* Injury to commercial credit is held not to be an element of damages for maliciously suing out an attachment in Melcher v. Clark, 145 Wash. 95, 258 Pac. 1032, annotated in 54 A.L.R. 448.

Divorce — *intoxication — continuation to suit.* To justify a divorce for gross and confirmed habits of intoxication, the habits, it is held in the Maine case of Fish v. Fish, 138 Atl. 477, annotated in 54 A.L.R. 327, must continue up to the time of the filing of the libel.

Eminent domain — *public benefit as public use.* That the taking of private property will confer a public benefit does not necessarily make the use a public one, is held in Ferguson v. Illinois C. R. Co., 202 Iowa, 508, 210 N. W. 604, annotated on public benefit or convenience as distinguished from use by the public as ground for the exercise of the power of eminent domain, in 54 A.L.R. 1.

Escrow — *wrongful delivery — effect.* Where a deed is placed in escrow and is delivered to the grantee by the escrow holder without the performance of the conditions for delivery, and without the knowledge or consent of the grantor, such deed is held to be void in the case of Clevenger v. Moore, 126 Okla. 246, 259 Pac. 219, which is accompanied by annotation in 54 A.L.R. 1237, on effect of unauthorized delivery or fraudulent procurement of escrow on title or interest in property.

Evidence — *libel — burden of proof.* In libel, when the defamatory communication is made on an occasion of qualified privilege, it is held in the West Virginia case of Rigney v. W. R. Keesee & Co. — W. Va. —, 139 S. E. 650, that the burden of proving malice is cast upon the plaintiff, except where the calumnious language is so violent as to raise an inference of malice.

The question of presumption and burden of proof as to malice when defamatory statement or writing is made on an occasion of qualified privilege is treated in the annotation following this case in 54 A.L.R. 1139.

Evidence — *medical expert — technical specialist.* That a physician, duly licensed to engage in the general practice of his profession, is not a technical specialist in a particular department of medical science is held in Pridgen v. Gibson, 194 N. C. 289, 139 S. E. 443, not to preclude him from testifying as an expert, where he states that, assuming a hypothetical statement of facts to be true, he can express an opinion satisfactory to himself as to a question of science pertaining to such department of medical learning.

Annotation on the competency of a physician or surgeon as an expert witness as affected by the fact that he is not a specialist, follows this case in 54 A.L.R. 855.

Evidence — *parol to vary writing — conditional delivery of instrument.* The right to prove that a written instrument was delivered upon condition is held in the Virginia case of Harris v. Sanford, 138 S. E. 465, annotated in 54 A.L.R. 699, not to be within the rule excluding parol evidence to vary a writing.

Executors and administrators — *payment of ward's money to general guardian.* An executor, it is held in the Wisconsin case of Hewitt v. Jamieson, 215 N. W. 573, discharges his obligation by paying to a general guardian of infant wards, who by statute has authority to settle all accounts of the wards, and to demand, sue for, collect, and receive all debts

due them, money bequeathed them by his testator.

Annotation on responsibility of executor or administrator or his bond for default of guardian of minor beneficiary of estate accompanies this case in 54 A.L.R. 1271.

Highways — *duty of street railway to repair.* A street railway company is held in Brobston v. Darby, 290 Pa. 331, 138 Atl. 849 to be under the implied duty, in the absence of contract, to keep in proper repair the portion of the highway occupied by its tracks.

Annotation on liability of street railway company or municipality for injury due to condition of part of street occupied by street railway follows this case in 54 A.L.R. 1285.

Highways — *nuisance — wires over street.* The stretching of electric wires by a private citizen for power purposes across a public street is held to be a nuisance in the Iowa case of Ackley v. Central States Electric Co. 214 N. W. 879, which is subject to abatement under statutes declaring the obstruction of public streets to be such, and requiring municipalities to keep streets free from nuisances.

Annotation on the right to stretch overhead wires across street or highway is appended to this case in 54 A.L.R. 474.

Insurance — *against theft — obtaining bonds by worthless check.* Insurance against robbery or theft while the property is in transit and in custody of an employee of the insured, or through the negligence of such employee having custody of the property while in transit, is held in Underwood v. Glove Indemnity Co., 245 N. Y. 111, 156 N. E. 632, to cover the securing of bonds by a thief who telephones notice of intention to purchase at a place some distance from the office of insured, and upon their delivery there obtains possession of them by giving a worthless check, and disappears.

The meaning of the term "in transit," as used in an insurance policy is the subject of the annotation which follows this case in 54 A.L.R. 485.

Insurance — *against theft of automobile — unlocked safety device.* Under a policy insuring an automobile against theft, which provides that in consideration of the reduction of the premium the car shall not be left unless the locking device is locked, it is held in Doerr v. National F. Ins. Co., 315 Mo. 266, 285 S. W. 961, annotated in 54 A.L.R. 1336, that the policy is not in force when the car is left with the device unlocked.

Insurance — *collision — tipping over of car.* Injury to an automobile by tipping over on the road in attempting to avoid a collision with other cars is held to be not within the operation of a policy insuring against injuries "caused solely by accidental collision with another object" in the Louisiana case of Brown v. Union Indemnity Co., 159 La. 641, 105 So. 918, which is annotated in 54 A.L.R. 1439, on insurance covering damage to automobile by accident or collision.

Insurance — *notice of disability — effect of insanity.* Permanent insanity of an insured, which causes in whole or in part permanent disability, which under the terms of the policy entitles the insured to a benefit, is held in the Arkansas case of Pfeiffer v. Missouri State L. Ins. Co., 297 S. W. 847, annotated in 54 A.L.R. 600, to excuse the insured from giving the notice of liability required by the terms of the policy.

Judges — *resignation — authority of successor.* Where, upon the resignation of a trial judge, a cause is left undetermined, a succeeding trial judge, it is held in the North Dakota case of Company A, First Regiment

v. State, 215 N. W. 476, cannot decide or make findings in the case without a trial de novo on all of the issues.

Authority of judge in respect of unfinished business of another judge is treated in the annotation which follows this case in 54 A.L.R. 948.

Landlord and tenant — *refusal to take possession — effect.* Where one who has contracted in writing to rent premises refuses to take them when tendered at the proper time, it is held in the South Carolina case of Simon v. Kirkpatrick, 141 S. C. 251, 139 S. E. 614, that a cause of action immediately arises in favor of the lessor for the full amount of the damages, present and prospective.

Liability of lessee who refuses to take possession under executed lease or executory agreement to lease is the subject of the annotation which is appended to this case in 54 A.L.R. 1348.

Liens — *agreement for share of recovery.* An agreement to pay one a percentage of the amount recovered through the audit of freight bills of the promisor is held to fix a lien upon the sum when recovered in Geddes v. Reeves Coal & Dock Co., 20 F. (2d) 48, annotated in 54 A.L.R. 282, on contract for compensation other than that of attorney on basis of share in or percentage of property or fund as creating an equitable lien.

Marriage — *estoppel to question.* The courts must, it is held in Simmons v. Simmons, 57 App. D. C. 216, 19 F. (2d) 690, when called upon to do so, declare void a marriage which is so declared by statute, even at the suit of a man who, while living with a married woman, furnished her money to secure a divorce, which she did by fraudulently claiming residence within the jurisdiction of the court, and falsely alleging facts to support the decree, of all of which he had knowledge.

This case is accompanied in 54 A.L.R. 75, by annotation on right of party to marriage who was aware of its invalidity because of a former undissolved marriage, to a decree of annulment.

Partnership — *chattel mortgage — priority over claims of creditors.* Persons selling goods to a partnership, the interest of one member of which is subject to a duly recorded chattel mortgage covering after-acquired property, which was executed at a time when there were no creditors of the partnership, are held in the Iowa case of Re Cutler & Horgen, 212 N. W. 573, not entitled to assert that the mortgage is inferior to their rights as creditors.

Annotation on the validity and effect of a chattel mortgage on partner's interest in firm accompanies this case in 54 A.L.R. 527.

Physicians and surgeons — *liability for causing well person to be sent to contagious hospital.* A physician is held not to be liable in the Missouri case of McGuire v. Amyx, 297 S. W. 968, for causing a well person to be sent to the hospital as suffering from smallpox, when, upon coming under the physician's observation, he presented physical evidences which to a reasonably prudent and informed physician indicated the presence of such disease, merely because he did not prescribe for him, and was not his attending physician.

Question of liability for committing, or aiding commitment, to contagious disease hospital of one not suffering from contagious disease, is considered in the annotation which follows this case in 54 A.L.R. 644.

Physicians and surgeons — *power to prevent advertising.* That the state may lawfully forbid advertising by practitioners of medicine and surgery, which solicits personal patronage of the advertisers, is held in Laughney v. Maybury, 145 Wash. 146, 259 Pac. 17, annotated in 54 A.L.R. 393, on constitutionality of statute or ordinance

prohibiting or regulating advertising by physician, surgeon or other person professing healing arts.

Physicians and surgeons — *revocation of license — dishonorable conduct.* A chiropractor's securing the printing of an advertisement falsely charging a hospital and the authorities of the Veterans' Bureau with having caused the death of a patient by barbarous and inhuman treatment, without adequate investigation, for the purpose of unjustly discrediting the officers of such institutions and increasing his own practice, justifies the revocation of his license, it is held in the Colorado case of State Medical Examiners v. Spears, 79 Colo. 588, 247 Pac. 563, which is followed in 54 A.L.R. 1498, by annotation on grounds for revocation of valid license of physician or surgeon, or dentist.

Railroads — *negligence in failing to shut off automobile engine.* The driver of a truck is held in Townsend v. Missouri P. R. Co., 163 La. 872, 113 So. 130, annotated in 54 A.L.R. 538, not to be negligent, so as to prevent recovery for injury by collision with a train at a highway crossing, in failing to shut off his engine, which has no self-starter, or not stopping to look and listen before crossing the tracks.

Receivers — *to wind up corporation — when denied.* The court will not, it is held in the Iowa case of McCarthy Co. v. Central Lumber & Coal Co., 215 N. W. 250, at the expiration of the charter of a corporation operating a large number of lumber yards, appoint a receiver at the request of minority stockholders to wind up the business, where the officers of the corporation are competent and trustworthy.

Annotation on appointment of receiver after dissolution, or expiration of charter of corporation, is appended to this case in 54 A.L.R. 1116.

Sale — *effect of taking check in payment.* Title to cotton purchased

for cash for which a check is given in payment is held not to pass until the check is paid in Young v. Harris-Cortner Co., 152 Tenn. 15, 268 S. W. 125, which is annotated in 54 A.L.R. 516.

Taxes — *exemption — Greek letter fraternity house.* A building conducted for the benefit of members of a Greek letter social fraternity, not for pecuniary profit, but to provide a home for them at moderate cost or gratuitously, where their general moral, educational, and social welfare may be promoted, is held in People ex rel. Carr v. Alpha Pi of Phi Kappa Sigma of Educational Asso., 326 Ill. 573, 158 N. E. 213, not to be within the statutory exemption from taxation accorded to property of beneficent and charitable organizations.

Annotation on exemption of college fraternity house or dormitory from taxation is appended to this case in 54 A.L.R. 1376.

Towage — *liability for grounding tow.* A tug master is held not to be liable for injuries caused by grounding his tow upon an uncharted and unknown rock in the fairway in The Arlington (C. C. A. 2d) 19 F. (2d) 285, which is annotated in 54 A.L.R. 101, on liabilities of the parties to a contract of towage with respect to injury sustained by the tow or tug during the performance of the towage service.

Weights and measures — *method of measurement.* When the distance between two points is sought to be ascertained, and there is nothing in the context or subject-matter to indicate the manner in which the measurement is to be ascertained, it is held in Stark County v. Henry County, 326 Ill. 535, 158 N. E. 116, it should be measured in a straight line on a horizontal plane.

The decisions on distance as determined by straight line or other method are gathered in the annotation which follows this case in 54 A.L.R. 777.

New Books and Recent Articles

A book is what the writer and the reader make it.

Administrative Powers Over Persons and Property. By Ernst Freund, Professor at the University of Chicago Law School. (The University of Chicago Press, Chicago, Ill.) .. $5.00

This volume is a comparative survey of administrative powers in regulative legislation which reveals the extent to which statutes operate through powers, and the relative use of licenses and orders, and of discretionary and non-discretionary action. The book is divided into two parts: the one, analytical or systematic (the system of administrative powers); the second, descriptive (statutory provisions operating with the aid of administrative powers). Thus, the first part of the book states principles upon the basis of the material in the second part; it gives a comprehensive view of the law which the digest of statutes substantiates. Besides covering the legislation of the Congress of the United States, this survey includes that of New York, of Great Britain or England, and prewar German or Prussian laws. Such a range permits more fruitful comparisons than would be possible upon the basis of exclusively American jurisdictions.

The Statute of Frauds. In an article on the "Statute of Frauds—a legal anachronism" and published in the Indiana Law Journal for April, 1928, the writer, Professor Hugh Evander Willis says: "The Statute of Frauds, so far as its contract clauses are concerned, has outlived its usefulness. These sections of the Statute of Frauds are no longer preventing fraud, if they ever did, but rather are a cause of fraud. They should be abolished. They should not be restated. The legal profession can no longer afford to stultify itself, either by enforcing their grotesque and unethical provisions, or by finding ways of escape from their unjust operation. Lord Nottingham congratulated himself upon his work in the enactment of the Statute. Any one who will now undo the work of Lord Nottingham will have more reason to congratulate himself."

Radio Regulation. Mr. James P. Taugher in the concluding pages of his article on the "Law of Radio Communication" in the Marquette Law Review for June, 1928, observes in reference to the Radio Act of 1927: "There can be no question as to the power of Congress to pass such an act. Federal ownership of the ether, or the control of Congress over interstate commerce makes its enactment proper."

A.L.R. Annotations in Volume 54 Include These Subjects:

Annotation concentrates to a focal point the learning on a subject.

Animals — Law as to cats. 54 A.L.R. 92.

Automobiles — Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or motorcycle, or licensing of operator. 54 A.L.R. 374.

Automobiles — Liability of employer for injuries by automobile while being driven by or for salesman or collector. 54 A.L.R. 627.

Automobiles — Liability of owner for negligence of one permitted by former's servant or member of his family to drive automobile. 54 A.L.R. 851.

Automobiles — Term "highway" in statutory provision relative to vehicle traffic as including street. 54 A.L.R. 1250.

Bailment — Deposit of grain without obligation to return identical grain as a bailment or a sale. 54 A.L.R. 1166.

Bankruptcy — Liability of bank which pays checks after filing of petition in bankruptcy against drawer. 54 A.L.R. 751.

Breach of peace — What constitutes breach of peace bond. 54 A.L.R. 388.

Conflict of laws — Applicability to contracts made or to be performed in another state or country, of a statute of the forum permitting person injured to maintain action directly against indemnity insurer. 54 A.L.R. 515.

Constitutional Law — Constitutionality of statute prescribing conditions of practising medicine or surgery as affected by question of discrimination against particular school or method. 54 A.L.R. 600.

Constitutional law — Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package. 54 A.L.R. 744.

Contempt — Privilege of defendant in contempt proceeding as to testifying against himself. 54 A.L.R. 1436.

Contempt — What courts or officers have power to punish for contempt. 54 A.L.R. 318.

Contracts — Conclusiveness of certificate or decision of architect or engineer under building or construction contract. 54 A.L.R. 1255.

Corporations — "Blue Sky Laws." 54 A.L.R. 498.

Corporations — Contract in relation to corporate stock as binding upon the corporation or personally upon the officers who sign it. 54 A.L.R. 1388.

Courts — Right of state court to decline jurisdiction of action under Federal Employers' Liability Act. 54 A.L.R. 1526.

Criminal law — Effect of, and remedy for, infringement of right of accused to communicate with his attorney. 54 A.L.R. 1225.

Criminal law — Right to notice and hearing before revocation of suspension of sentence, parole, or conditional pardon. 54 A.L.R. 1471.

Custom — Custom or contractual obligation against making for third person machine or device similar to that which one has contracted to make for another. 54 A.L.R. 1219.

Eminent domain — Eminent domain for development or operation of mines and mining industries. 54 A.L.R. 56.

Estoppel — Respective rights of owner of certificate of stock who intrusts it to a third person and a purchaser from the latter under a forged transfer or indorsement. 54 A.L.R. 353.

Evidence — Admissibility of parol evidence to vary or explain contract implied from the regular indorsement of a bill or note. 54 A.L.R. 999.

Exchanges — Board of trade or similar organization as affected with public interest subjecting it to state regulation. 54 A.L.R. 304.

Executors and administrators — Family settlement of intestate estate. 54 A.L.R. 976.

Extradition — One charged with desertion or failure to support wife or child as fugitive from justice, subject to extradition. 54 A.L.R. 281.

Fraudulent conveyances — Applicability of Bulk Sales Act to hotel, restaurant, boarding house, saloon, pool hall, or livery stable. 54 A.L.R. 1537.

Homestead — Lien of tax collector's bond. 54 A.L.R. 1285.

Injunction — Right, in absence of express contract, to enjoin former employee from soliciting complainant's customers. 54 A.L.R. 350.

Injunction — Right to enjoin transfer of stock on books of corporation. 54 A.L.R. 1421.

Insurance — Burglary, larceny, theft, or robbery within policy of insurance. 54 A.L.R. 467.

Insurance — Cancelation of life insurance policy for nonpayment of loan. 54 A.L.R. 1070.

Insurance — Provision for prorating as applicable where buildings owned by the same person having a wall in common are covered by different policies. 54 A.L.R. 88.

Insurance — Provision limiting indemnity to permanent disability as affected by clause providing for payment for life and during disability. 54 A.L.R. 294.

Mechanics' Liens — Substitution or replacement of material as affecting time for filing mechanics' lien. 54 A.L.R. 984.

Mortgage — Failure to keep up insurance, or to pay taxes or interest, as accelerating maturity of mortgage in absence of express provision to that effect. 54 A.L.R. 1230.

Municipal corporations — Liability of municipal corporation for tort of officer or employee of water department. 54 A.L.R. 1497.

Municipal corporations — Validity or statute or ordinance vesting discretion in public officials without prescribing a rule of action. 54 A.L.R. 1104.

Physicians — Validity, construction, and effect of stipulation in application or policy of insurance waiving privilege as to communication to or testimony by physician. 54 A.L.R. 412.

Restraint of trade — Right of labor union to refuse to work on materials produced or transported by nonunion labor. 54 A.L.R. 806.

Sale — What amounts to an attachment or levy within provision of the Uniform Conditional Sales Act avoiding reservation of title by unfiled contract. 54 A.L.R. 269.

Statutes — Computation of time allowed for approval or disapproval of bill by governor. 54 A.L.R. 339.

Taxes — Who entitled to notice necessary to perfect tax title. 54 A.L.R. 756.

Trover and conversion — Refusal of corporation to issue, convert, or transfer stock as conversion. 54 A.L.R. 1157.

Trusts — Effect of oral agreement to enlarge time for redemption from sale under mortgage or other lien on real property. 54 A.L.R. 1207.

Waters — Liability for damages from obstruction of stream by débris or waste. 54 A.L.R. 358.

Waters — Powers of state under Ordinance of 1787 in respect of navigable waters. 54 A.L.R. 438.

Waters — Transfer of riparian right to use water to nonriparian land. 54 A.L.R. 1411.

Wills — Term "goods" employed in will as covering real property. 54 A.L.R. 97.

Witnesses — Competency of agent with whom transaction by person since deceased was had to testify adversely to estate. 54 A.L.R. 264.

Woman Lawyer Becomes Assistant Attorney for Big Mining Company

By JAMES W. FOWLER

TO BECOME assistant attorney for one of the biggest and richest gold mining corporations in the world, and to win recognition as one of the leading lawyers in western South Datoka, is the achievement of Miss Blanche Colman of Lead City, South Dakota.

Born in Deadwood, South Dakota, where her parents were among the early settlers, her father being one of the pioneer justices of the peace in the gold-rush days of the frontier town, the future attorney was graduated from both the commercial and regular courses of the Deadwood high school in 1903.

Miss Blanche Colman

Shortly thereafter she became a clerk in the law offices of Chambers Kellar, general attorney for the Homestake Mining Company, at Lead City. Miss Colman was advanced from clerk to stenographer soon, and when James G. Stanley, who had been associated with Mr. Kellar, left Lead City to become attorney for a large company at Denver, Colorado, she took Mr. Stanley's place, having in the meantime studied law and having been admitted to practice in the state and Federal courts. She prepared herself for the bar while carrying on her duties as stenographer and secretary in Mr. Kellar's office, and has never attended law school.

For several years now she and Mr. Kellar have attended to all of the legal work for the big mining company, as well as carrying on general practice, and Mr. Kellar regards her services highly.

She prepares cases for trial, draws pleadings, appears in court, and carries on consultations with clients; in fact, does everything connected with legal practice, both in and out of court, that any of the lawyers of South Dakota have to do.

She was admitted to practice several years ago, and since that time has been actively engaged in her duties with Mr. Kellar. Many matters of importance she handles herself, and she likewise assists Mr. Kellar in his cases and the general work of the office.

She is prominent in the social work of the community, and, while she has never aspired to office herself, her influence and advice on political and civic matters are eagerly sought.

Correspondence from Our Readers

Lawyers Co-operative Pub. Co.
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Gentlemen:—

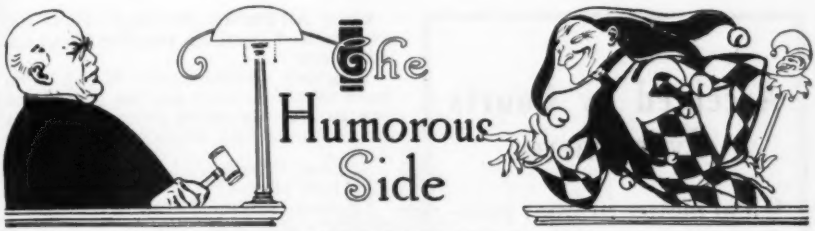
I have developed a record system that may be of interest to other lawyers. Whenever a new case comes into the office, I have a card with the name and address of my client on the top line, and the name and address of the adverse party on the next line; the third line is left blank for the number of the case, date of judgment, and other pertinent records. I then set forth the date the client was in, a brief statement of the facts, the terms of agreement for compensation, and from then until the case is disposed of that card is kept in a drawer in my desk, and every time I have occasion to do any work in connection with that case I note on the card the work done, regardless of how detailed or minor it may be. This record becomes so complete that I seldom have occasion to refer to my file, but get all the information from the card, and furthermore, when the case is finally disposed of, I return to my client any papers that are valuable or may be of interest, and destroy the balance, retaining the card only.

This system has many advantages. I have all the facts at my instant command; it is immediately accessible; I do not have to waste time by fumbling through the file for papers, as my card indicates the contents of all papers in the files. When the case is disposed of I am not burdened with the cost of retaining bulky files that may never be of value or interest, but at any time in the future I can refer to the card for any facts in connection with the case.

I have found a 4x6 card to be best suited to all cases, although, of course, many cases require more than one card. I have also developed a very good bookkeeping system by having a 4x6 ledger card attached to the case card, and in that way I have all matters in connection with that case at my disposal.

John P. Moran.

Cleveland, Ohio.



Laugh when you are tickled, and laugh once in a while anyway.—Josh Billings.

A Slight Mistake.—In the course of a trial it became necessary to establish the date of certain events with relation to the age of the witness on the stand—a very dark and rotund colored woman.

"How old are you, Mandy?"

"I'se seventy-three, jedge."

"Mandy, you don't look that old," protested the examining counsel.

"I sure is, jedge."

After a few more questions the witness interrupted a wrangle between opposing counsel by saying: "Jedge, I'se been recollectin' an' I was wrong when I said my age was seventy-three. I remembers now—dat's my bust measure."
—Oral Hygiene.

The Dusky Pedant.—Lawyer—Can you tell me if the defendant was expensively garbed?

Rastus (a witness)—'Deed she was sah, Ah knows expensive garbage when I sees it.—Gardiner Journal.

Not His Move.—Attorney in County Court—How do you propose to pay?

Debtor—I do not propose to pay; it is the plaintiff who proposes that I should!—Carrollton (Ky.) Democrat.

Experienced.—A young barrister, conducting his first case, and pleading drunkenness as his client's defense, began his speech:

"Milord and gentlemen of the jury, you all know what it is to be drunk!"
—Lethbridge Herald.

Semper Fidelis.—Judge—You broke into the shop of Mrs. Smith, the jeweler?

Accused—Yes, I did not want to die without keeping my promise to my grandfather.

Judge—What was that?

Accused—That I would open a jeweler's shop.—Chicago Tribune.

Satirical Lady.—"So you want a divorce, Rastus?"

"Yes, suh, jedge, yo' honah—Ah sho'ly does."

"What's the trouble?"

"'Count ob ma wife makin' an ironical remark."

"An ironical remark?"

"Yes, suh—she says if you don't go to work, I'll hit you in the face wid dis flatiron."—Florida Times-Union.

The Dark Past. Judge—Were you ever in trouble before?

Prisoner—Well—I—er—kept a library book too long once, and was fined threepence.—Answers.

Reformed.—Judge—I hope you'll never be guilty of snatching ladies' purses again.

Prisoner—I won't, your honor. When I get out of jail I can make an honest livin' the rest of me life sellin' powder puffs.—Oneonta Star.

He Beat It.—Judge—Prisoner! Did you steal that rug?

Prisoner—No, your honor. A lady gave it to me and told me to beat it—and I did.—Covington Leader.

Timing His Reply.—Judge: Have you anything to say, prisoner, before sentence is passed upon you?

Prisoner: No, your lordship, except that it takes very little to please me.
—Answers.

Logical Excuse.—Magistrate: "How do you make out that you couldn't possibly have been speeding?"

Motorist: "We're in the middle of spring cleaning at our house, Your Worship; I was proceeding home at the time, so you see that naturally I had no inducement to hurry." (Case dismissed.)
—Humorist.

Crazy All Right.—Attorney—Have you ever noticed anything peculiar about the defendant?"

Neighbor (hesitatingly) W-el-l, I do know that if he can't pay the grocer and buy gas for his car he goes without the gas.—Kansas City Journal.

A First Offender.—Lawyer: "Is this your first offence?"

Prisoner: "Yes—I was never caught before!"—Montreal Star.

Something To Look Forward To.—Waiter, give me your name."

"What for, sir?"

"I haven't the change for a tip, so I've decided to remember you in my will."

Forensic Repartee.—The London courts recently furnished two passable illustrations of repartee. In the one the magistrate at Willesden admonished a young woman who had been brought before him:

"Be brave for the sake of your husband and children."

"But I have none," the girl protested.

"Then I hope you soon will have. Next case!" said the magistrate.

The other incident concerns a barrister at the Bow County Court, who asked a witness:

"Did you see the accident?"

"Wot! Why, I am the accident!" the man replied aggrievedly.

—N. Y. Herald Tribune.

The Graver Crime.—State's Attorney—Do you think we can convict him for that bank job?

Assistant—No, but I think we can get him for running past that stop signal after the robbery.

—Robertsdale (Ala.) American.

Impressed.—A colored prisoner, taken for banditry, came before the General Sessions, so a lawyer we know attests, and was held in bail of twenty-five thousand dollars. When statement was made from the bench to this effect attachés were surprised that the Negro was undismayed. Rather there was a look of admiration in his eyes. As he was led toward the Bridge of Sighs and jail he remarked: "Dat ge'man sho' does talk in magnificent figures."—New Yorker.

Drinks On Cupid.—"What caused the postponement of the wedding?"

"Both objected. He was drunk and that's why she objected. And he was so

drunk he objected because he thought they were trying to get him to commit bigamy by marrying twins."—Judge.

A Sliding Scale.—Elopers: "Five dollars for a marriage ceremony! We haven't that much, Judge."

Modern Justice of the Peace: "Well, I can give you a companionate marriage for two dollars."—Life.

All Wet.—Judge—Did the accused give you the impression of a drunken man on the night of the affair?

Witness—Yes, he was wearing a watch with an illuminated dial and was trying to light his cigar by it."—Shrapnel.

Interpretation.—First Lawyer—Our client is reaching for his pocketbook.

Second Lawyer—Yes, that's a motion for a new trial.

Valuable Information.—Judge: "Your wife says you have her terrorized."

Prisoner: "Honestly, your honor, I—"

Judge: "I am not asking this in my official capacity, but as man to man, how do you do it?"—Oral Hygiene.

Auld Lang Syne.—Judge—"Your face seems familiar."

Prisoner—"We were boys together."

Judge—"Nonsense."

Prisoner—"Yes, we were, because you are about 50 and so am I."

—Dairyman's Monthly Review.

The Month's Best Alibi.—Judge: You were going sixty miles per hour.

Defendant: There was a good reason, Your Honor. This cop was chasing me and I had a stolen car.—St. Louis Star.

In Deadly Peril.—Judge: "You are charged with shooting butterflies out of season."

Prisoner: "Your honor, I shot them in self-defense."

Willing To Aid.—Lawyer—Do I understand that you want to divorce your wife?

Client—No, that isn't it at all; I just want to help my father-in-law divorce his.

Honest About It.—Judge—Just fooling away your time in that apartment, I suppose?

Burglar—No, I was taking things seriously.—Capper's Weekly.